

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JEROME E. SMITH,)	
Plaintiff)	
)	
v.)	C.A. NO. 13-40064-TSH
)	
CITY OF WORCESTER, a municipal)	
corporation; Worcester City Manager)	
MICHAEL V. O'BRIEN; Worcester Chief)	
of Police GARY J. GEMME; DETECTIVE)	
TERRENCE CAHILL; SGT. CARL)	
SUPERNOR, DETECTIVE MICHAEL)	
RYDER, DETECTIVE JAMES GUITTAR,)	
CHRISTOPHER PANARELLO, GARY)	
MORRIS, JOHN DOE 1, JOHN DOE 2,)	
Defendants)	

DEFENDANTS' ASSENTED TO MOTION FOR CONTEMPT
AGAINST SHALIMAR GONZALEZ

Now come the Defendants, City of Worcester, Michael V. O'Brien, Gary J. Gemme, Terence Cahill, Carl Supernor, Michael Ryder, James Guittar, Christopher Panarello and Gary Morris, with the assent of Plaintiff, and hereby respectfully move this Court, pursuant to Fed. R. Civ. P. 45, to issue a finding of contempt of court for Shalimar Gonzalez ("Gonzalez") for her failure to attend a deposition on September 18, 2014, pursuant to a subpoena.

Pursuant to Fed. R. Civ. P. 45(a)(2)(B), a subpoena must issue for attendance at a deposition, and according to rule 45(a)(3), may be issued and signed by an attorney as an officer of the court. Pursuant to rule 45(e), a court may hold in contempt "a person who, having been served, fails without adequate excuse to obey the subpoena."

In this case, Defendants sought to depose Shalimar Gonzalez, who, according to paragraphs 133-139 of Plaintiff's Complaint, is alleged to have had an interaction with a police officer who made specific references to the alleged incident involving the Plaintiff on May 28,

2010. (Plaintiff's Complaint, ¶¶ 133-139). Moreover, Ms. Gonzalez had previously signed an affidavit under oath recounting the facts of the alleged interaction as set forth in paragraphs 133-139 of Plaintiff's Complaint. Defendants also have information that Rosa Gonzalez, Shalimar Gonzalez's mother, was present during this alleged encounter. Therefore, Defendants seek to depose Shalimar Gonzalez in connection with the allegations in Plaintiff's Complaint and her sworn affidavit.

Counsel for Defendants, Assistant City Solicitor Kevin M. Gould, signed and issued a subpoena, in conformance with Fed. R. Civ. P. 45, to compel Shalimar Gonzalez's appearance at a deposition that was scheduled for September 18, 2014 at 10:00 a.m. (See Deposition Statement and Deposition Exhibit 1, attached hereto as Exhibit 1.) After attempts to serve the subpoena on Ms. Gonzalez at her residence were ineffective, Ms. Gonzalez was served in-hand on September 8, 2014 at 3:49 p.m., by a constable at the constable's office, Francis J. Trapasso & Associates, at 47 Harvard Street, Worcester, Massachusetts, where she went to pick up her subpoena and the subpoena for her mother, Rosa Gonzalez. (Exh. 1). On September 8, 2014, at approximately 4:00 p.m., Shalimar Gonzalez contacted Assistant City Solicitor Gould, via telephone at his office at the City of Worcester Law Department, and indicated that she would not be attending the deposition scheduled for September 18, 2014, because she did not want to be involved in the case, and that she would not comply with the subpoena even on a later date. (Exh. 1.) Ms. Gonzalez failed to appear for the deposition on September 18, 2014, although the Defendants' attorneys were present with a stenographer, and waited at least thirty minutes for her to appear. (Exh. 1.) Counsel for the Plaintiff was not present as Ms. Gonzalez was not expected to appear. (Exh. 1). However, counsel for Plaintiff was on telephone notice and was ready to attend and

take part in the deposition in the event Ms. Gonzalez appeared. Thus, Shalimar Gonzalez's failure to attend the deposition was willful.

WHEREFORE, Defendants seek an order of contempt against Shalimar Gonzalez and an order for costs associated with her non-appearance at the deposition.

CITY OF WORCESTER,
MICHAEL V. O'BRIEN, GARY GEMME,
TERRENCE CAHILL, CARL SUPERNOR,
MICHAEL RYDER, JAMES GUITTAR,
CHRISTOPHER PANARELLO & GARY
MORRIS

By their attorneys,
David M. Moore
City Solicitor

/s/ Kevin M. Gould
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CERTIFICATE OF LOCAL RULE 7.1 CONFERENCE

I, the undersigned, hereby certify that I have communicated with Plaintiff's counsel in a good faith attempt to resolve or narrow the issues presented by this Motion, as a result, this motion is filed with Plaintiff's assent.

/s/ Kevin M. Gould
Kevin M. Gould
Assistant City Solicitor

CERTIFICATE OF SERVICE

I, Kevin M. Gould, do hereby certify that on this 7th day of October, 2014, I served the within Defendants' Assented to Motion for Contempt Against Shalimar Gonzalez by providing a copy of the same to Plaintiff's counsel of record via the United States District Court's electronic notification system, and by mailing a copy via first-class and certified mail to Shalimar Gonzalez, 7 Ashmont Avenue, 3rd Floor, Worcester, MA, 01610.

/s/ Kevin M. Gould

Kevin M. Gould

Assistant City Solicitor